## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

MARCUS JONES	§	
v.	<b>§</b>	CIVIL ACTION NO. 6:14cv256
DIRECTOR, TDCJ-CID	§	

## MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ENTERING FINAL JUDGMENT

The Petitioner Marcus Jones, proceeding *pro se*, filed this application for the writ of habeas corpus challenging the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Jones was convicted of retaliation, enhanced by one prior felony conviction, receiving a sentence of 15 years in prison. This is the third federal habeas corpus petition which Jones has filed challenging his retaliation conviction. The Respondent has filed a motion to dismiss the petition as successive, to which Jones did not file a response.

After review of the pleadings, the magistrate judge issued a report recommending that the petition be dismissed with prejudice as to its refiling without permission from the Fifth Circuit, but without prejudice to its refiling once such permission has been obtained. No objections were filed to this report; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. <u>Douglass v. United Services Automobile Association</u>, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the report of the magistrate judge. Upon such review, the Court has concluded that the report of the magistrate judge is correct. It is accordingly

**ORDERED** that the report of the magistrate judge (docket no. 15) is hereby **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled application for the writ of habeas corpus is hereby **DISMISSED WITH PREJUDICE** as to its refiling without first obtaining permission from the Fifth Circuit, but without prejudice as to its refiling once such permission has been obtained. It is further

**ORDERED** that the Petitioner Marcus Jones is **DENIED** a certificate of appealability *sua sponte*; this denial refers only to an appeal of the decision in this case and shall have no effect upon Jones' right to seek permission from the Fifth Circuit to file a successive petition. Finally, it is

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED.** 

SIGNED this 4th day of March, 2015.

MICHAEL H. SCHNEIDER

UNITED STATES DISTRICT JUDGE

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